



parties to request a conference with the Court by October 15, 2017, if disputes about the record exist.<sup>1</sup>

3. Counsel have conferred extensively with respect to the contents of a draft proposed administrative record and have made substantial progress.

4. For example, the parties have agreed that the limited disclosure pursuant to a Court order of the 60-page memorandum (“Memorandum”) submitted by the Attorney General of Massachusetts to the U.S. Department of Education on November 30, 2015, will facilitate resolution of their disagreements about the record in this case and resolution of the case. Accordingly, on Friday, October 13, 2017, Plaintiffs filed (1) a motion to order limited disclosure of the Memorandum, which the Defendant does not oppose, subject to the limitations set forth therein (Document No. 36); and (2) a Joint Motion for a Protective Order and a Proposed Protective Order (Document No. 37).

5. To date, counsel have identified two areas of ongoing dispute regarding the administrative record:

- a. Whether the administrative record should contain additional material to explain the processes by which the Department of Education determined Plaintiffs’ debts to be legally enforceable, certified the debts for TOP, and subsequently referred the debts for TOP; as well as how the other documents in the record evidence that agency action in Plaintiffs’ cases; and
- b. Whether the record should include all or a portion of the Memorandum or its 2700 pages of attachments.<sup>2</sup>

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<sup>1</sup> The parties submit this status report today, as October 15, 2017 was a Sunday.

<sup>2</sup> Defendant objects to the disclosure of the attachments as set forth in Document No. 36.

6. The parties continue to work in good faith to narrow the first area of dispute and believe that further progress can be made with respect to the first area identified above with additional time.

7. While the parties previously believed judicial intervention before the filing of the record would be expeditious, at this time, the parties do not anticipate agreement about, *inter alia*, the second issue identified in paragraph 5(b), above.

8. In addition, upon the filing of the record, Plaintiffs may seek to take limited discovery to the extent necessary to facilitate effective judicial review. Defendants will object to any such request on the grounds that Plaintiffs are not entitled to discovery in an APA action.

9. As such, the parties now submit that the most expeditious process would be to file the record to the extent agreed upon, first, and ask the Court to resolve any outstanding areas of dispute once the record is before it.

10. Moreover, the undersigned Assistant U.S. Attorney has an upcoming jury trial in the matter of Jean v. Brennan, Civil Acton No. 14-11969-ADB, which was recently continued from October 10 to October 30, 2017. At this time, it is anticipated that the trial will last at least one week.

11. For the substantive and scheduling reasons set forth above, it is respectfully requested that the Court:

- a. extend the deadline for filing the administrative record by three weeks, from October 27, 2017 to **November 17, 2017**; and
- b. set a deadline for the Plaintiffs to file any motion to compel discovery and/or supplement the record, on or before **December 1, 2017**.

Respectfully submitted,

DARNELL WILLIAMS and YESSANIA  
TAVERAS,

By their attorneys,

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Dated: October 16, 2017

Respectfully submitted,

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official capacity as Secretary of Education,

By her attorneys,

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Dated: October 16, 2017

### **LOCAL RULE 7.1 CERTIFICATE**

Counsel have conferred and this motion is being filed jointly, on behalf of all parties.

/s/ Alec P. Harris  
Alec P. Harris

Dated: October 16, 2017

### **CERTIFICATE OF SERVICE**

I, Alec Harris, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants by First Class Mail.

/s/ Alec P. Harris  
Alec P. Harris

Dated: October 16, 2017